

362 MAIN CAPITOL BUILDING
SENATE BOX 203020
HARRISBURG, PA 17120-3020
(717) 787-7428
FAX (717) 787-9242

22 DALLAS SHOPPING
CENTER
MEMORIAL HIGHWAY
DALLAS, PA 18612
(570) 675-3931
FAX (570) 674-5037
TOLL FREE (888) 736-1153

2512 ROUTE 6
HAWLEY, PA 18428
(570) 226-5980
FAX (570) 226-5964

lbaker@pasen.gov
senatorbaker.com

STATE SENATOR
LISA BAKER
20TH SENATORIAL DISTRICT



Senate of Pennsylvania

January 24, 2019

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Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635

Dear Attorney Shultz:

A major contributor to Pennsylvania's improved economic condition has been the series of reforms enacted in the early 2000s to address the medical malpractice crisis. After years of political confrontation over powers and responsibilities, these reforms came about through extensive negotiations between the three branches of state government. Act 13 of 2002 created the Pennsylvania Interbranch Commission on Venue, which developed the crucial rule that helped abate the crisis.

By reining in the costs of excessive litigation and out-of-line awards, Pennsylvania was able to stabilize insurance rates and stem the loss of medical practitioners and facilities. The change to curtail venue shopping worked even better than intended, an infrequent occurrence in the world of implementing and realizing reform.

As someone who was part of the Ridge/Schweiker administration when the medical malpractice crisis raged, and who has seen how the restrictions on venue shopping brought constructive balance to the system, I did not foresee dramatic change as necessary or imminent in 2019. In this context, proposed changes promulgated by the Civil Rules Procedure Committee of the Pennsylvania Supreme Court are quite alarming.

Why change now and risk a renewed litigation and cost explosion? There has not been perceptible pressure from the public or from the medical community. The word "fairness" has been offered in justification, but fairness for whom is the big question mark hovering over this issue. Not only would a productive status quo be disrupted. It can be argued that the consolidation of medical systems will make them larger targets. This appears to be a serious self-inflicted wound for our structure of medical care.

From the vantage point of my Senate district, this reversion of the rules compounds the already considerable challenges we confront in providing accessible and affordable health care in small communities and rural areas.

Before venue reform was enacted, Philadelphia held more medical malpractice trials than any county in the nation. The number of million dollar awards in the city was only slightly below those for the entire state of California. High-risk medical specialists were moving out of the commonwealth, family practices were closing, and maternity wards were becoming fewer. Insurance premiums were soaring, with no relief in sight. The coalition formed to advocate tort reform was broad in composition and deep in commitment. The concern of many has to be why the committee is messing with success.

One of Pennsylvania's strengths is the medical care system, the institutions, the technology, the practitioners, and the research capacity that are decided competitive advantages and indispensable to the quality of life. If this change moves forward unchallenged, the fear is it will reverse progress and prove immensely destabilizing to medical care.

This proposed rule needs to be suspended for a fuller examination of its implications, for medical care and for the overall economy. We need to have a reputable entity such as the Legislative Budget and Finance and Committee do an economic analysis of the expected impact of the promulgation. This will give the legal community, the medical community, the business community, and the public ample opportunity to weigh in with statistics, trends, arguments, and philosophies. The committee can put forward their reasoning for change, but the jury will be the public at large rather than a small segment of the legal community.

My father was a well-regarded attorney who instilled in me the critical importance of carefully building a case and ensuring the principles of fairness applied to all parties in the process. Without further consideration of this proposed rule change in full openness, we lack the compelling case and the fundamental fairness that are the foundations of a good and wise legal system.

I look forward to additional discussion of this consequential matter.

Sincerely,

Lisa Baker
Senator

pc: Chief Justice Thomas Saylor
Senator Daylin Leach

Representative Rob Kauffman
Drew Crompton, Senate General Counsel